

Remarks/Arguments:

I. Status

The Office Action dated June 30, 2006 (the “Office Action”) has been carefully reviewed. Claims 1 and 8-21 have been canceled, claims 2-7 and 22-27 have been amended and claims 28-37 have been added. Accordingly, claims 2-7 and 22-37 are pending in this application. Reconsideration of this application, as amended, is respectfully requested.

II. The 102(e) Rejections

In the Office Action, claims 1-4, 8-9, 13-16, 20-23 and 25 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,719,202 B1 to Kawai et al. (hereinafter “Kawai”). Claims 1, 8-9, 13-16 and 20-21 have been canceled and claims 23 and 25 have been amended to depend from claim 26 and are discussed in the section directed to the rejection of claim 26. Claim 22 has been amended to be in independent form. Additionally, claims 1-4 have been amended to depend from claim 22. Kawai does not disclose all of the limitations of claims 2-4 and 22, as amended.

Discussion Regarding the Patentability of Claim 22

1. **Claim 22**

Claim 22, as amended, recites:

A method of operating a checkout terminal comprising:
scanning an item with a scanner;
determining that the scanned item has an electronic article surveillance tag;
allowing, after the step of determining, deactivation of the electronic article with an active electronic article surveillance tag deactivator;
disabling the scanner from scanning other items based upon the step of determining; and

activating an indicia identifying the location of the active electronic article surveillance tag deactivator.

Thus, claim 22, as amended recites a method in which the location of an active electronic article surveillance (EAS) deactivator is identified by activation of an indicia.

2. Kawai Does Not Disclose Indicia Activation

The Examiner rejected claim 22 based upon the proposition that Kawai disclosed all of the limitations of claim 22. (Office Action at pages 3 and 5). Respectfully, Kawai has been mischaracterized.

Specifically, the Examiner alleged that the activation of an indicia was disclosed by Kawai at FIGs. 2 and 3. The Examiner did not, however, identify any component in FIGs. 2 or 3 that provides an indication as to the location of an EAS deactivator which is also “activated.” Moreover, after reviewing the specification of Kawai, the Applicants have not been able to ascertain any component of Kawai which is activated for the purpose of identifying the location of the EAS detector. The most likely component is the LED 94. As clearly shown in FIG. 3 of Kawai, however, the LED 94 is merely a circular component and thus incapable of showing a direction. Accordingly, because the LED 94 is located on the control panel 90 while the deactivating section 61 is located away from the LED 94 next to the reading section 80, the LED 94 cannot function to indicate the location of the deactivating section 61

Anticipation under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Accordingly, because claim 22 recites “activating an indicia” which provides the function of “identifying the location of the active electronic article surveillance tag deactivator,” and because Kawai does not

disclose any indicia which can be activated to show the location of the deactivating section, Kawai does not disclose each element of claim 22. Therefore, the Applicants respectfully submit that the rejection of claim 22 should be withdrawn.

3. Conclusion

Because claim 22 recites a method in which the location of an active electronic article surveillance (EAS) deactivator is identified by activation of an indicia and Kawai does not disclose any such method, the Applicants submit that the rejection of claim 22 has been overcome.

Discussion Regarding the Patentability of Claims 2-4

Claims 2-4 also stand rejected as allegedly being anticipated by Kawai. Claims 2-4 have been amended to depend from and incorporate all of the limitations of claim 22. Claims 2-4 further recite additional limitations. Accordingly, for at least the same reasons as those set forth above in connection with claim 22, it is respectfully submitted that claims 2-4 are patentable over the prior art.

III. The 103(a) Rejections

In the Office Action, claims 5-7, 10-12, 17-19 and 24 were rejected under 35 U.S.C. 103(a) as being obvious over Kawai in view of U.S. Patent No. 6,598,791 B2 to Bellis, Jr. et al. (hereinafter "Bellis"), claim 26 was rejected over Kawai in view of U.S. Patent No. 5,469,142 to Bergman et al. (hereinafter "Bergman"), and claim 27 was rejected over Kawai in view of Bellis in further view of Bergman. Claims 10-12 and 17-

19 have been canceled. The claims, 5-7, 24, 26 and 27, along with claims 23 and 25 which have been amended to depend from claim 26, are patentable over the cited art.

Discussion Regarding the Patentability of Claims 5-7

Claims 5-7 depend, either directly or through one or more intermediate claims, from claim 22 and include all of the limitations of claim 22. The Examiner has rejected claims 5-7 based primarily upon Kawai with reliance on Bellis for teaching an EAS detector in a bagwell. (Office Action at page 7). Accordingly, the proposed modification fails to correct the deficiencies of Kawai discussed above with respect to the elements of claim 22. Therefore, a *prima facie* case of obviousness has not been presented with respect to claims 5-7. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 5-7.

Discussion Regarding the Patentability of Claim 26

1. Claim 26

Claim 26 recites:

A method of operating a checkout terminal comprising:
scanning an item with a scanner;
determining that the scanned item has an electronic article surveillance tag;
allowing, after the step of determining, deactivation of the electronic article;
disabling the scanner from scanning other items based upon the step of
determining; and
indicating that an intervention is needed if the electronic article surveillance tag
has not been deactivated within a predetermined time of allowing the deactivation.

Claim 26 thus recites a method wherein an intervention indication is generated in response to an extended delay in deactivating an electronic surveillance tag.

2. Bergman Does Not Disclose Intervention Indication

The Examiner acknowledged that Kawai does not disclose an intervention indication in the event of a delay in deactivating an electronic surveillance tag. (Office Action at page 7). The Examiner relied upon Bergman for showing this element. Respectfully, Bergman does not disclose generating an intervention indication in response to an extended delay in deactivating an electronic surveillance tag.

Specifically, the Examiner has cited to Bergman at FIG. 3 and column 3, lines 22-32. There, Bergman merely identifies the period of time during which the system will attempt to detect a tag. In other words, if no tag is detected after 350 milliseconds, the system of Bergman determines that the tag has been deactivated. In contrast, claim 26 recites that *failure* to deactivate the tag results in an indication that intervention is needed. As described in the Applicants' specification, a customer's inability to deactivate a tag results in provision of assistance or intervention. (See, e.g., Applicants' specification at page 28, lines 14-17.

Determining that a tag has been deactivated when the tag is not sensed is *not* the same as determining that a customer needs assistance because a tag remains activated. Therefore, even if Kawai is modified in the manner suggested by the Examiner, such modification fails to arrive at the invention of claim 26. Accordingly, under MPEP § 2143.03, claim 26 is patentable over the prior art.

3. Conclusion

For any or all of the foregoing reasons, it is respectfully submitted that the rejection of claim 26 as being obvious over Kawai in view of Bergman has been

successfully traversed, and the Applicants respectfully submit that the rejection of claim 26 under 35 U.S.C. § 103 should be withdrawn.

Discussion Regarding the Patentability of Claims 23-25

Claims 23-25 have been amended to depend, either directly or through one or more intermediate claims, from claim 26 and include all of the limitations of claim 26. The Examiner rejected claims 23 and 25 based upon Kawai and claim 24 based primarily on Kawai with reliance on Bellis for teaching an EAS detector in a bagwell. (Office Action at pages 6-7). Accordingly, the proposed modification fails to correct the deficiencies of Bergman discussed above with respect to the elements of claim 26. Therefore, claims 23-25 are patentable over the prior art for at least the same reasons set forth above with respect to claim 26. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 23-25.

Discussion Regarding the Patentability of Claim 27

Claim 27 was rejected based primarily on Kawai with reliance on Bellis for teaching an EAS detector in a bagwell and Bergman for the limitation of intervention indication. Claim 27 as amended is an independent claim which recites “indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated within a predetermined time of allowing the deactivation.” This is the same limitation discussed above with respect to claim 26. Accordingly, for at least the same reason set forth above with respect to claim 26, Bergman fails to disclose the intervention indication of claim 27. Therefore, claim 27 is patentable over the combination of Kawai, Bellis and Bergman.

IV. Claims 28-37


New claims 28-37 have been added. These claims recite novel and non-obvious limitations. For example, claims 28-30 depend from claim 27 and include the limitations of claim 27 discussed above. Claim 31 is an independent claim that recites program instructions which “generate an indication that an intervention is needed if the electronic article surveillance tag has not been deactivated within a predetermined time of allowing the deactivation.” As discussed above, this limitation is not present in the art cited by the Examiner. Claims 32-37 depend from claim 31 and include the same limitation. Accordingly, claims 28-37 are believed to be allowable over the prior art.

V. Conclusion

Applicants respectfully request entry of the amendments and favorable consideration of the application.

A prompt and favorable action on the merits is requested.

Respectfully submitted,
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